

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

RECEIVED

MAY 23 1996

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)

Allocation of Costs Associated With)
Local Exchange Carrier Provision of)
Video Programming Services)

CC Docket No. 96-112

DOCKET FILE COPY ORIGINAL

OPPOSITION TO MOTION FOR EXTENSION OF TIME

The National Cable Television Association (NCTA), by its attorneys, strongly opposes the "Motion for Extension of Time" (Motion), submitted May 17, 1996, in the above-captioned proceeding by the United States Telephone Association (USTA).

This proceeding asks how the cost of integrated plant used to transmit telephone and video services should be allocated between these services. Prompt resolution of the issue is absolutely vital because until the Commission decides how integrated plant should be allocated, the Commission will not know whether investments in video are burdening telephone ratepayers. The Commission will not be able to fulfill its obligation to ensure that interstate telephone "charges ... [are] just and reasonable", 47 U.S.C. § 201(b), until it resolves the issues in this proceeding.

USTA notes the issues to be addressed are complex. But they are not new. This issue was presented to the Commission in an OPP Working Paper as early as 1988.¹ NCTA and others have raised the issue of video/telephone cost allocations in dozens of proceedings over the

¹ R.M. Pepper, "Through the Looking Glass: Integrated Broadband Networks, Regulatory Policies, and Institutional Change," OPP Working Paper No. 24, Nov. 23, 1988.

No. of Copies rec'd 0211
List ABOVE

last several years, including a Joint Petition for Rulemaking NCTA filed with the Consumer Federation of America.² USTA had an opportunity to comment each time. Most recently, NCTA raised the cost allocation issue in comments in the Commission's OVS rulemaking. USTA's response was to accuse NCTA of seeking "delay" and attempting to "hinder competition."³ But it is USTA that is seeking delay and attempting to hinder the prompt implementation of effective cost allocation procedures.

USTA argues that the time period allowed for comment is too short. It complains that the NPRM was released too late on a Friday afternoon to permit work on one weekend, and separately objects that it is unwilling to work over the Memorial Day weekend. Based upon these factors, USTA maintains that the comment deadline should be extended by 13 days. Separately, in anticipation of voluminous reply comments that have yet to materialize, USTA seeks an additional 11 days for replies. While this schedule is not as leisurely as USTA might like, the importance of the proceedings to ratepayers and competitors warrants prompt action.

USTA claims there is "no reason" for the existing deadlines. It argues that although the Commission "must prescribe rules for Open Video Systems (OVS) by August 8, 1996,"⁴ but there is no similar requirement for video/telephone cost allocation. USTA is technically correct that this proceeding is not subject to a statutory deadline, but that does not explain situation.

² Joint Petition of the Consumer Federation of America and the National Cable Television Association for Rulemaking and Request for Establishment of a Joint Board, RM-8221, Apr. 21, 1993.

³ Reply Comments of the United States Telephone Association, CS Docket No. 96-46, Apr. 11, 1996, at 10.

⁴ *Id.* at 2 (emphasis supplied). Actually, the Commission must, by statute, "complete all action (including any reconsideration)"⁴ to implement OVS by August 8, 1996. In order to complete reconsideration by August 8, 1996, the Commission must issue its initial order shortly. Once reconsideration is complete, USTA's members may seek certifications.

The Commission stated in the NPRM:

The basic problem addressed in this proceeding is how to allocate common costs between the nonregulated offerings that will be introduced by incumbent local exchange carriers and the regulated services they already offer. Our current cost allocation rules were not designed for this task.⁵

Without rules that allocate costs between regulated services and OVS, the Commission has no basis for concluding the telephone rates offered over integrated systems are “just and reasonable” as required by Section 201 (b) of the Communications Act.⁶ Similarly, until this proceeding is completed, the Commission will be unable to find OVS rates are “just and reasonable.”⁷

It follows that contrary to USTA’s suggestion, this proceeding is extremely time-sensitive. The Commission must complete its rulemaking at the earliest possible date, so that rules protecting ratepayers against cross-subsidy are in place before the OVS service is offered. If not, neither the Commission nor USTA’s members will know the rules of allocation so as to avoid telephone ratepayer subsidies for OVS.

NCTA and others must file comments under the same deadline as other parties. We are prepared to file on time. We urge the Commission to maintain the present schedule so that it may complete its deliberations as promptly as possible.

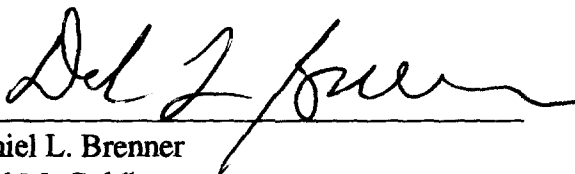
⁵ Allocation of Costs Associated with Local Exchange Carrier Provision of Video Programming Services, FCC No. 96-214, rel. May 10, 1996, at 3.

⁶ 47 U.S.C. § 201 (b).

⁷ 1996 Telecommunications Act, § 653 (b) (1) (A).

Respectfully submitted,

NATIONAL CABLE TELEVISION ASSOCIATION, INC.

A handwritten signature in dark ink, appearing to read "Del L Brenner", written over a horizontal line.

Daniel L. Brenner

Neal M. Goldberg

David L. Nicoll

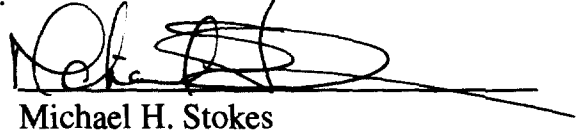
1724 Massachusetts Avenue, N.W.

Washington, D.C. 20036

May 23, 1996

CERTIFICATE OF SERVICE

I, Michael H. Stokes, do hereby certify that on this 23rd day of May, 1996, copies of the foregoing **"Opposition to Motion for Extension of Time"** were delivered by first-class, postage pre-paid mail upon the following:



Michael H. Stokes

* Regina Keeney, Esq.
Chief, Common Carrier Bureau
Federal Communications Commission
1919 M Street, N.W. - Room 500
Washington, D.C. 20554

Andrew Multz
Accounting and Audits Division
Common Carrier Bureau
Federal Communications Commission
2000 L Street, N.W. - Room 257
Washington, D.C. 20554

Mary McDermott, Esq.
USTA
1401 H Street, N.W. - Suite 600
Washington, D.C. 20005

* HAND DELIVERED